

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

PALTALK HOLDINGS, INC. \* November 6, 2022  
\*  
VS. \* CIVIL ACTION NO. W-21-CV-757  
\*  
WEBEX COMMUNICATIONS, \*  
INC. \*  
CISCO WEBEX LLC \*  
CISCO SYSTEMS, INC. \*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
DISCOVERY HEARING (via Zoom)

APPEARANCES:

For the Plaintiff: Amber Brianna Magee, Esq.  
Ryan V. Caughey, Esq.  
Susman Godfrey LLP  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002

Kalpana Srinivasan, Esq.  
Susman Godfrey LLP  
1900 Avenue Of The Stars, Ste 1400  
Los Angeles, CA 90067-6029

For the Defendant: Sarah E. Piepmeier, Esq.  
Perkins Coie LLP  
505 Howard Street  
San Francisco, CA 94117

Ryan Hawkins, Esq.  
Perkins Coie LLP  
11452 El Camino Real, Suite 300  
San Diego, CA 92130

Court Reporter: Kristie M. Davis, CRR, RMR  
PO Box 20994  
Waco, Texas 76702-0994  
(254) 340-6114

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10:00 1 (Hearing begins.)

10:00 2 DEPUTY CLERK: A Civil Action in Case  
10:00 3 6:21-CV-757, Paltalk Holdings, Incorporated versus  
10:00 4 WebEx Communications, Incorporated, et al. Case called  
10:00 5 for a discovery hearing.

10:00 6 THE COURT: If I could have announcements  
10:00 7 from counsel, please.

10:00 8 MR. JONES: Your Honor, on behalf of  
10:00 9 Cisco, Mike Jones. And the arguments today will be  
10:00 10 made for Cisco by Sarah Piepmeier. And I'll let her  
10:00 11 introduce the others on the phone.

10:01 12 MS. PIEPMEIER: Good morning, Your Honor.  
10:01 13 Sarah Piepmeier from Perkins Coie on behalf of Cisco.  
10:01 14 And I have my colleague Ryan Hawkins with me, also from  
10:01 15 Perkins Coie.

10:01 16 On behalf of Cisco we have Bill Silverio  
10:01 17 who is on the screen. And I believe we may also have  
10:01 18 on audio Brian -- I'm sorry. Brian Sinclair and Xiao  
10:01 19 Chang. Thank you.

10:01 20 THE COURT: Good morning, everyone. I  
10:01 21 appreciate the client representatives attending.

10:01 22 And for the defendant?

10:01 23 MR. CAUGHEY: Good morning, Your Honor.  
10:01 24 This is Ryan Caughey from Susman Godfrey for the  
10:01 25 plaintiff. And I'll talk --

10:01 1 THE COURT: And I guess y'all are the  
10:01 2 plaintiff. Okay. Very good.

10:01 3 MR. CAUGHEY: Yep.

10:01 4 And with me is my colleague Amber Magee.  
10:01 5 She's going to be handling the argument. And she is a  
10:01 6 young associate just basically finishing her first year  
10:01 7 at the firm. I thought you might want to know.

10:01 8 THE COURT: I think that's terrific. My  
10:02 9 class at University of Texas Law School just ended on  
10:02 10 Friday. And it's always good to have young folks  
10:02 11 participate in these -- in these hearings.

10:02 12 So I'm happy to take up any issues that  
10:02 13 you have.

10:02 14 MR. CAUGHEY: Thank you, Your Honor.

10:02 15 MS. PIEPMEIER: Thank you, Your Honor.

10:02 16 This is Sarah Piepmeier, again, for  
10:02 17 Cisco. And probably I should kick things off because  
10:02 18 we're here today at our request.

10:02 19 Counsel, is that okay with you?

10:02 20 MR. CAUGHEY: That's perfectly fine.

10:02 21 MS. PIEPMEIER: Okay. Thank you.

10:02 22 And I should say, Your Honor, Ms. Magee  
10:02 23 probably has more oral argument experience than almost  
10:02 24 anyone on this line. She's had a busy year in the  
10:02 25 past. So looking forward to this.

10:02 1 We're here, Your Honor, today because an  
10:02 2 issue arose during the deposition of plaintiff's  
10:02 3 infringement expert that revealed that the parties have  
10:02 4 a claim construction dispute regarding the meaning of  
10:03 5 the term or the word "each." That word appears five  
10:03 6 times in Claim 1.

10:03 7 And there are two limitations that I  
10:03 8 think we would generally agree are pretty central to  
10:03 9 the parties' dispute on infringement. It became  
10:03 10 apparent for the first time during the deposition of  
10:03 11 plaintiff's infringement expert that plaintiff is  
10:03 12 interpreting the word "each" to mean one or more.

10:03 13 That is not a term that had been raised  
10:03 14 in Markman before, Your Honor. Your Honor heard  
10:03 15 arguments on Markman on February 24, determined that  
10:03 16 each issue -- that each term that came up before Your  
10:03 17 Honor that was raised as an issue for Markman would be  
10:03 18 accorded its plain and ordinary meaning, but has never  
10:03 19 ruled on this issue because it was not raised.

10:03 20 At that time, Cisco certainly had no idea  
10:03 21 that Paltalk would take this position. Our position  
10:03 22 is, of course, that Paltalk should have raised it at  
10:04 23 that time, but be that as it may...

10:04 24 We now have a clear claim construction  
10:04 25 dispute. Because if "each" means and is construed to

10:04 1 mean one or more, there is a very different reading of  
10:04 2 the claim than if it is construed to mean "all," which  
10:04 3 is Cisco's understanding of the plain and ordinary  
10:04 4 meaning of the term.

10:04 5 We believe, Your Honor, that it is now  
10:04 6 within the Court's province to decide this dispute as a  
10:04 7 matter of law under 02 Micro. And I know Your Honor is  
10:04 8 more familiar with 02 Micro than certainly anyone on  
10:04 9 this conference.

10:04 10 But I will just note that I think it's  
10:04 11 particularly instructive here, because the issue in  
10:04 12 02 Micro was also a pretty simple word -- or two words,  
10:04 13 in fact. It was "only if." And I know Your Honor  
10:04 14 knows that. I'm speaking more for the benefit of  
10:04 15 others who may not.

10:04 16 And the Court in that case, the district  
10:04 17 court, construed that or said essentially it doesn't  
10:04 18 need to be construed because it's so simple.

10:04 19 And then when the parties got to a jury  
10:05 20 trial it was apparent that they were -- there was a  
10:05 21 claim construction dispute that had never been resolved  
10:05 22 by the Court. And as Your Honor knows, the Federal  
10:05 23 Circuit found that was improper.

10:05 24 So we have here right now a claim  
10:05 25 construction dispute that first became apparent in the

10:05 1 deposition of Paltalk's infringement expert. We  
10:05 2 believe that it is a significant dispute, that it  
10:05 3 requires attention.

10:05 4 I want to make two brief points and then  
10:05 5 I'll turn it over to Ms. Magee.

10:05 6 The first is that we anticipate that  
10:05 7 Paltalk will argue, you know, this issue is now moot,  
10:05 8 or at least we don't need to address a separate claim  
10:05 9 construction proceeding. Because Cisco briefed this  
10:05 10 issue in its summary judgment filings that it filed  
10:05 11 last week.

10:05 12 That is true, we did. But there are  
10:05 13 three reasons why I don't think that changes the  
10:05 14 result.

10:05 15 The first is that we had a summary  
10:05 16 judgment deadline. We had no choice but to brief this  
10:05 17 issue because we believe it is case dispositive. We  
10:05 18 couldn't simply wait and, you know, presume that Your  
10:06 19 Honor would, A, agree to take up this hearing and, B,  
10:06 20 would agree to hear briefing on the substance here.

10:06 21 So we had to file it in summary judgment.

10:06 22 The second point, Your Honor, is that  
10:06 23 while it may also be a summary judgment issue, it is  
10:06 24 primarily a claim construction issue. And those two  
10:06 25 issues are different.

10:06 1 And we believe, Your Honor, that Cisco  
10:06 2 and the parties, frankly, have a right to a decision as  
10:06 3 a matter of law in the claim construction issue. That  
10:06 4 may inform the summary judgment issue.

10:06 5 In fact, I would suggest that the two may  
10:06 6 rise and fall together. Although I'm sure Paltalk  
10:06 7 would dispute that if we get to that point.

10:06 8 But it is a claim construction issue. It  
10:06 9 can be addressed without deciding whether there is a  
10:06 10 material dispute of fact as to infringement. And it  
10:06 11 would certainly aid the parties in getting ready for  
10:06 12 pretrial issues to have that decision.

10:06 13 The third issue, Your Honor, is that I  
10:06 14 actually think Paltalk's argument, or their anticipated  
10:06 15 argument, I believe they're going to raise it, Your  
10:07 16 Honor, because they asked us on Sunday to cancel this  
10:07 17 hearing in light of the summary judgment briefing which  
10:07 18 we declined.

10:07 19 But I think that the very fact that this  
10:07 20 is highlighted in the summary judgment briefing shows  
10:07 21 how important it is. In other words, it is not the  
10:07 22 case that we're simply randomly asking Your Honor to  
10:07 23 construe a word that seems relatively clear on its  
10:07 24 face. This is a central dispute between the parties.

10:07 25 And we believe on our end -- and Paltalk

10:07 1 may dispute this -- that it is case dispositive. And I  
10:07 2 say that, Your Honor, because there's one patent at  
10:07 3 issue. The word "each" appears in the one independent  
10:07 4 claim that they are currently asserting five times.  
10:07 5 And we believe, Your Honor, that this would resolve the  
10:07 6 matter.

10:07 7 And so for those reasons we believe that  
10:07 8 it is appropriate to handle this as a claim  
10:07 9 construction issue and then let the chips fall where  
10:07 10 they may on summary judgment.

10:07 11 The last point I'll raise just briefly,  
10:07 12 Your Honor, and I don't want to get into the weeds  
10:07 13 here. And so I can address in more granular detail if  
10:08 14 that is something that Paltalk thinks is an issue. But  
10:08 15 this is not something we could have known sooner.

10:08 16 Paltalk took the position during Markman that every --  
10:08 17 THE COURT: Yeah. I'm not worried about  
10:08 18 that.

10:08 19 MS. PIEPMEIER: Okay. Thank you.

10:08 20 THE COURT: I mean, this comes up a lot.

10:08 21 But I'm a little bit confused in this  
10:08 22 sense. It is not unusual for me -- let's say that you  
10:08 23 had raised -- let's say you all had fussed over this  
10:08 24 word "each" at the Markman and I had said I don't think  
10:08 25 it needs to be construed yet. It's plain and ordinary



10:08 1 meaning.

10:08 2 I probably would have said -- I have said  
10:08 3 it a thousand times -- probably that I would take this  
10:08 4 up is -- at the summary judgment once -- stage once the  
10:08 5 plaintiff's position is in concrete with respect to  
10:08 6 their understanding of it in their infringement  
10:09 7 expert's opinion.

10:09 8 And so what I'm curious about is, in your  
10:09 9 motion for summary judgment I'm not -- what's not clear  
10:09 10 to me because I haven't seen your motion -- is whether  
10:09 11 your motion says we win -- let me -- does your motion  
10:09 12 say we win because "each," as a matter of law, means X.  
10:09 13 We don't do X and therefore as a matter of law we win.

10:09 14 Is that the way it's framed? Or how is  
10:09 15 your motion for summary judgment with respect to "each"  
10:09 16 framed?

10:09 17 MS. PIEPMEIER: Your Honor, that argument  
10:09 18 is there. I'm not going to say that's the only  
10:09 19 argument, but that argument is certainly there.

10:09 20 Respectfully, Your Honor, the reason that  
10:09 21 we believe that we should have a separate determination  
10:09 22 on claim construction is that we believe that that  
10:09 23 determination should come sooner. And that it  
10:09 24 shouldn't require Your Honor to look at all of the  
10:09 25 other issues in summary judgment. In other words,

10:10 1 that's not the only issue in the brief. And Your Honor  
10:10 2 is going to have to decide --

10:10 3 THE COURT: Oh, oh, oh, no. No. No.  
10:10 4 I'm -- okay. To that extent, I get it. And I can look  
10:10 5 at that one issue quicker. For right now -- and I was  
10:10 6 not following you and that helps.

10:10 7 I definitely think that these are the  
10:10 8 kind of issues that need to be addressed right away. I  
10:10 9 had -- my first patent trial as a judge basically we  
10:10 10 had almost this exact situation where the plaintiffs  
10:10 11 were saying, there's infringement because word -- I  
10:10 12 forgot what it was -- word X means this and they  
10:10 13 infringe, and the other side was saying it means Y.  
10:10 14 They lose.

10:10 15 And so, again, I'm just going back  
10:10 16 thinking there's a great potential in this case -- had  
10:11 17 you all asked me to construe the word "each," probably  
10:11 18 it would have been you that would have asked me to  
10:11 19 construe it and probably the plaintiff would have said  
10:11 20 plain and ordinary meaning. And I think I would have  
10:11 21 said back then, the time when I can take this up is in  
10:11 22 a summary judgment context.

10:11 23 And if on this one issue you all --  
10:11 24 again, I'm -- if the defendant has framed this one  
10:11 25 issue in the way that they think it needs to be framed

10:11 1 to where the plaintiff could respond to it and I could  
10:11 2 take up this discrete issue more quickly, as a general  
10:11 3 rule, I would be happy to do that, and it's probably  
10:11 4 what I would have recommended.

10:11 5 So help me out again. Is your summary  
10:11 6 judgment on this adequately briefed because that was  
10:11 7 the position you were always going to take, or is there  
10:11 8 something that happened because the depo of the  
10:12 9 technical expert that is a problem for you?

10:12 10 MS. PIEPMEIER: Your Honor, let me try to  
10:12 11 answer that succinctly.

10:12 12 The deposition occurred before the  
10:12 13 summary judgment filing that Cisco made. And so  
10:12 14 Cisco's brief reflects that issue that arose, and it  
10:12 15 also reflects, you know, the -- our arguments on  
10:12 16 summary judgment. So it addresses claim construction  
10:12 17 in the context of having taken the deposition of  
10:12 18 plaintiff's expert.

10:12 19 I'll note one other curious thing. I  
10:12 20 want to make sure I'm being clear here because I may  
10:12 21 have not framed this.

10:12 22 Plaintiff Paltalk is taking the position  
10:12 23 here that the term means something other than what we  
10:12 24 understand it to be its plain and ordinary meaning. So  
10:12 25 this is not something Cisco could have raised before

10:12 1 because it never occurred to us anyone would take that  
10:12 2 position.

10:12 3 So Cisco is not seeking an alternate  
10:12 4 construction of this term. And I think that's clear,  
10:12 5 but I just want to make sure.

10:13 6 We're just saying under the plain and  
10:13 7 ordinary meaning, you know, this is what it means and  
10:13 8 we're (audio distortion) briefed in the context of a  
10:13 9 lot of other issues and the resolution of, you know, we  
10:13 10 believe there's a factual issue in dispute.

10:13 11 And so I believe it would be easier for  
10:13 12 Your Honor to address this simply as a brief claim  
10:13 13 construction issue.

10:13 14 The second thing I'd say, Your Honor, is  
10:13 15 we've never seen plaintiff's position on this. They  
10:13 16 have not responded to our summary judgment brief yet  
10:13 17 because that deadline isn't until next Thursday. We've  
10:13 18 never seen Markman briefing from them.

10:13 19 The only thing we know about their  
10:13 20 position on this term is a few statements from their  
10:13 21 expert in depositions. So we're operating a little bit  
10:13 22 blind here.

10:13 23 We raised this to Your Honor immediately  
10:13 24 because we didn't want to delay, but we do not have the  
10:13 25 benefit of actually knowing what their argument is as

10:13 1 to why each should be something other than all.

10:13 2 And so I would say that, you know, for  
10:13 3 this process to actually occur, we would need to see  
10:14 4 what their arguments are.

10:14 5 THE COURT: Okay. And that's helpful  
10:14 6 too.

10:14 7 And let me add something else. I have,  
10:14 8 you know, and I am -- I have a passing familiarity with  
10:14 9 02 Micro. And so that doesn't mean that I haven't been  
10:14 10 in situations before where I thought -- and I'm not --  
10:14 11 I'm using the word "each" without indicating any  
10:14 12 opinion on the merit one way or the other.

10:14 13 But I have -- I have been in situations  
10:14 14 where you all have argued that a word like "each" had  
10:14 15 different meanings, and I felt like each, because of  
10:14 16 the context that it was used in the patent, still had a  
10:14 17 plain and ordinary meaning that I wasn't going to give  
10:14 18 to it and that a jury would be able to figure out the  
10:15 19 right -- whether or not there's infringement.

10:15 20 Which is a long way to say again that --  
10:15 21 I'm just musing out loud as I'm trying to figure out  
10:15 22 the right method to take here, whether it would be to  
10:15 23 have a separate Markman hearing on this word and hear  
10:15 24 the competing proposed constructions and the briefing  
10:15 25 or whether or not it's in -- it's already been framed

10:15 1 up in a way that once I have the response from the  
10:15 2 plaintiff that I might not be able to handle. But  
10:15 3 everything you said has been very informative.

10:15 4 Is there anything else you wanted to say  
10:15 5 before I heard from plaintiff?

10:15 6 MS. PIEPMEIER: No, Your Honor. I'll  
10:15 7 pass to Ms. Magee.

10:15 8 THE COURT: Okay. I think I've got a  
10:15 9 pretty good handle on it, though. You did a great job  
10:15 10 of explaining it to me.

10:15 11 So I'll hear from plaintiff now.

10:15 12 MS. PIEPMEIER: Thank you, Your Honor.

10:15 13 MS. MAGEE: Good morning, Your Honor.  
10:15 14 Thank you. Amber Magee here for the plaintiff Paltalk  
10:15 15 Holdings.

10:15 16 Your Honor --

10:16 17 THE COURT: Which office are you in?

10:16 18 MS. MAGEE: I'm out of the Houston  
10:16 19 office, Your Honor.

10:16 20 THE COURT: Okay. I'm told by some  
10:16 21 Susman lawyers that's where the real Susman lawyers  
10:16 22 are, but my most recent law clerk is in New York, so I  
10:16 23 will -- I'll defer on that. But I was just curious. I  
10:16 24 look forward to hearing your argument.

10:16 25 MS. MAGEE: Yes, Your Honor. We don't

10:16 1 have any non-Houston SG lawyers on the call. So no one  
10:16 2 here to speak for New York or LA or Seattle.

10:16 3 But, Your Honor, Paltalk disagrees with  
10:16 4 Cisco's positions both as to the need for sort of  
10:16 5 supplemental or extra briefing particularly on this  
10:16 6 purported claim construction issue but also of course  
10:16 7 as to the merits of each.

10:16 8 Cisco's position is that Paltalk and its  
10:16 9 expert Dr. Schaefer are creating some sort of  
10:16 10 definition of each. But, in fact, Your Honor, at all  
10:17 11 times, Paltalk's definition of each has been based on  
10:17 12 the plain and ordinary meaning in light of the patent  
10:17 13 specification, as is commanded from decades of Federal  
10:17 14 Circuit precedent.

10:17 15 So the idea that Paltalk has deviated  
10:17 16 from the plain and ordinary meaning of each is simply  
10:17 17 untrue.

10:17 18 Your Honor, Cisco requested five pages of  
10:17 19 supplemental briefing to address this issue in its  
10:17 20 discovery dispute letter to the Court. As of today,  
10:17 21 Cisco has dedicated 28 pages of summary judgment and  
10:17 22 Daubert briefing to address this issue.

10:17 23 Docket Entry 53, that's eight pages of  
10:17 24 Cisco's Daubert arguments about the construction of  
10:17 25 each against Dr. Schaefer.

10:17 1 Docket Entry 54, 20 more pages of Cisco  
10:17 2 raising primarily this exact issue with respect to the  
10:17 3 understanding of the term "each."

10:17 4 Paltalk doesn't see how five more pages  
10:17 5 of briefing could clarify this issue any more than the  
10:18 6 28 pages that Cisco has already drafted and that  
10:18 7 Paltalk is undertaking a response to.

10:18 8 Our responsive briefs are due on this  
10:18 9 point on December 15th, so next Thursday, and that's  
10:18 10 where Paltalk plans to engage with the substance of  
10:18 11 Cisco's motion.

10:18 12 And, Your Honor, Ms. Piepmeier also  
10:18 13 suggested that Cisco could not have known about this  
10:18 14 issue prior to Dr. Schaefer's deposition, which  
10:18 15 occurred in the -- right before Thanksgiving.

10:18 16 Your Honor, that's simply not true. As  
10:18 17 pointed out even in the dispute chart submitted to the  
10:18 18 Court, Dr. Schaefer's infringement contentions, his  
10:18 19 final contentions in April 28th of 2022, there's  
10:18 20 evidence there of Dr. Schaefer's plain and ordinary  
10:18 21 meaning construction of the term "each."

10:18 22 And so Paltalk thinks that Cisco has  
10:18 23 probably waived this argument by waiting until December  
10:18 24 to bring it, particularly when it was apparent back in  
10:19 25 April.



10:19 1 Your Honor, you mentioned earlier that  
10:19 2 maybe a thousand times or so you've said that the  
10:19 3 appropriate place to take up, you know, sort of  
10:19 4 late-coming claim construction issues would be at  
10:19 5 summary judgment.

10:19 6 Your Honor, you actually said that in the  
10:19 7 parties' Markman hearing, and I believe Paltalk quoted  
10:19 8 the part of the transcript in its part of the discovery  
10:19 9 dispute chart.

10:19 10 So Paltalk thinks that Cisco has had  
10:19 11 nearly 30 pages of briefing at this point to express  
10:19 12 its views on this each issue. Paltalk should get an  
10:19 13 ample amount of pages to respond and plans to respond  
10:19 14 to those arguments on December 15th. Additional  
10:19 15 briefing is not necessary and not needed.

10:19 16 Cisco would very much like to sort of  
10:19 17 brief this as a standalone issue now and sort of thwart  
10:19 18 Paltalk's efforts to respond to summary judgment, Your  
10:19 19 Honor, but it doesn't make sense to Paltalk, quite  
10:19 20 frankly, to implement this sort of parallel briefing  
10:19 21 when Cisco could have raised this issue earlier and  
10:19 22 this issue will certainly be teed up for the Court by  
10:20 23 Paltalk's December 15th response date.

10:20 24 This isn't the appropriate forum to talk  
10:20 25 about sort of the substance of the arguments, Your

10:20 1 Honor. But again, I'll note, and Dr. Schaefer said as  
10:20 2 much in his deposition, his understanding of each is  
10:20 3 based on the specification, and that's clearly the  
10:20 4 right approach based on case law.

10:20 5 Cisco's expert, in fact, tried to add  
10:20 6 some sort of construction in his own deposition and in  
10:20 7 his own report. And that's really the crux of, you  
10:20 8 know, any new constructions that should be applied to  
10:20 9 the term "each."

10:20 10 We think the plain and ordinary meaning  
10:20 11 is apparent from the specification and is consistent  
10:20 12 with Dr. Schaefer's positions.

10:20 13 Lastly, Your Honor, both now and in the  
10:20 14 February Markman hearing, Cisco has repeatedly  
10:20 15 mentioned 02 Micro. The specter of 02 Micro is ever  
10:20 16 looming according to Cisco.

10:20 17 But, Your Honor, as teed up in Paltalk's  
10:20 18 response, the 02 Micro issue pertains to whether or not  
10:20 19 the scope of claims is encompassed by a certain term.  
10:20 20 That's different than a dispute over the meaning of the  
10:21 21 terms, as indicated on Page 1361 of the 02 Micro  
10:21 22 decision.

10:21 23 So Cisco often throws out the 02 Micro  
10:21 24 term, you know, as something that the Court should  
10:21 25 always be worried about, but this is not an 02 Micro

10:21 1 issue per the meaning of 02 Micro itself.

10:21 2 So, Your Honor, Paltalk believes there's  
10:21 3 no need for supplemental briefing and that the parties  
10:21 4 should be able to take this up on summary judgment as  
10:21 5 Your Honor instructed. And disagrees with Cisco's  
10:21 6 explanation of how we got to be in this position where  
10:21 7 there's a purported claim construction issue in early  
10:21 8 December. And ultimately on the merits of how that  
10:21 9 claim construction issue should be resolved.

10:21 10 THE COURT: Anything else from Cisco?

10:21 11 MS. PIEPMEIER: Yes, Your Honor. Very  
10:21 12 briefly. Sarah Piepmeier again.

10:21 13 Just a couple of points.

10:21 14 The first is that Ms. Magee's point that  
10:21 15 there's 28 pages of briefing on this precisely  
10:21 16 demonstrates why we should address this to Your Honor  
10:21 17 as a discrete issue.

10:21 18 There's a lot of other stuff in those  
10:21 19 briefs too. It's not just the issue of claim  
10:22 20 construction. And we believe that this could be  
10:22 21 decided much more easily without the Court having to  
10:22 22 wade into all of that, and that that would make sense.

10:22 23 That is why our proposal was for five  
10:22 24 pages of briefing.

10:22 25 Now, I will say in one amendment to our

10:22 1 suggested relief that I believe that either Paltalk  
10:22 2 should go first because they are the ones who are  
10:22 3 seeking a construction that is -- that differs from the  
10:22 4 plain and ordinary meaning, or that Cisco should have a  
10:22 5 reply.

10:22 6 But in any event, Your Honor, we think we  
10:22 7 can do this a lot easier without Your Honor having to  
10:22 8 wade into six different sets of briefing.

10:22 9 The second point, Your Honor, is I'm not  
10:22 10 going to address the substance here. I believe Your  
10:22 11 Honor has enough to deal with on procedures (audio  
10:22 12 disruption) that we disagree. But I'm not going to  
10:22 13 address substance here.

10:22 14 The final point on 02 Micro, Your Honor,  
10:22 15 I don't agree with that reading of 02 Micro. And I  
10:22 16 certainly don't agree with how it applies here.

10:22 17 I don't think it makes sense to get into  
10:22 18 that here, although I would be delighted to go into  
10:22 19 that in great detail. But I just think that  
10:23 20 distinction is, A, wrong and not applicable here.

10:23 21 And finally, Your Honor, we're not trying  
10:23 22 to thwart their ability to respond to summary judgment.  
10:23 23 They're going to respond to summary judgment on  
10:23 24 December 15th (audio distortion) and should be  
10:23 25 addressed separately. And that that would be, frankly,

10:23 1 a better use of the parties' resources and judicial  
10:23 2 resources.

10:23 3 Thank you, Your Honor.

10:23 4 THE COURT: Thank you, ma'am.

10:23 5 Anything else for plaintiff?

10:23 6 MR. CAUGHEY: Your Honor, may I just --  
10:23 7 very briefly a practical point about all this.

10:23 8 As has been said several times, Paltalk's  
10:23 9 summary judgment response is due on December 15th.  
10:23 10 Also due on December 15th are pretrial exchanges around  
10:23 11 witnesses and exhibits and such. Trial's set for  
10:23 12 February 23rd, and there's obviously a number of  
10:23 13 deadlines and summary judgment adjudication in the  
10:24 14 interim.

10:24 15 We received 60 pages-ish of summary  
10:24 16 judgment and Daubert briefing across four separate  
10:24 17 briefs.

10:24 18 The notion of Paltalk filing additional  
10:24 19 briefing while it's also responding to those, in  
10:24 20 28 pages of briefing, is just not aligned with this  
10:24 21 Court's schedule. And we're talking about judicial  
10:24 22 resources and efficiency. You've done a trillion of  
10:24 23 these obviously.

10:24 24 If you look at this issue that's going to  
10:24 25 be very cleanly briefed and presented by both sides,

10:24 1 obviously you can decide that issue on the summary  
10:24 2 judgment papers first, if that's your inclination or  
10:24 3 not, or in connection with everything else.

10:24 4 But having a parallel briefing on  
10:24 5 something that's already briefed, given the load and  
10:24 6 the schedule presently, just doesn't seem like a  
10:24 7 practical and sufficient solution to me.

10:24 8 MS. PIEPMEIER: Your Honor, if I may --

10:24 9 THE COURT: Got it.

10:24 10 MS. PIEPMEIER: Oh. I'm sorry, Your  
10:25 11 Honor.

10:25 12 THE COURT: Sure. No, no, please.

10:25 13 MS. PIEPMEIER: Thank you, Your Honor.

10:25 14 I would note there is some compression in  
10:25 15 the schedule certainly. And I'm not going to get into  
10:25 16 why that happened.

10:25 17 But, Your Honor, we would certainly be  
10:25 18 amenable to pushing the briefing on summary judgment  
10:25 19 and Daubert just a little bit to provide time and space  
10:25 20 in the schedule for this to occur. The remaining  
10:25 21 briefing, that is.

10:25 22 We're also responding to Daubert briefing  
10:25 23 from them, Your Honor. It's not just a one-way street.

10:25 24 We certainly would be amenable to pushing  
10:25 25 jury instructions and other pretrial disclosures which

10:25 1 absolutely could be taken up. There's no urgency to  
10:25 2 that happening next Thursday.

10:25 3 The final point I'll note as a  
10:25 4 housekeeping note, Your Honor, is that also pending at  
10:25 5 this time is Cisco's motion to stay pending re-exam of  
10:25 6 this one patent case. And that is another  
10:25 7 consideration in terms of housekeeping and how Your  
10:25 8 Honor may wish to stagger, you know, hearing all of  
10:25 9 this. If Your Honor chooses to.

10:25 10 THE COURT: My general experience is the  
10:26 11 only limitation on Daubert motions is the number of  
10:26 12 experts that are expected to appear and the page limit.  
10:26 13 So none of that comes as a surprise.

10:26 14 Let me do this -- and is there anything  
10:26 15 that anyone else wanted to say before I move on?

10:26 16 MR. CAUGHEY: The only thing I would  
10:26 17 say -- this is Ryan Caughey for Paltalk, Your Honor --  
10:26 18 is obviously -- if it's not obvious, we would prefer to  
10:26 19 keep the current schedule deadlines in place, all of  
10:26 20 them, because we think it leads to an orderly process  
10:26 21 before trial which is going to come upon us before we  
10:26 22 know it.

10:26 23 THE COURT: Okay. So this isn't  
10:26 24 really -- in 99 percent of my -- 100 percent of my  
10:26 25 discovery hearings I'm able to figure out what you all

10:26 1 need and kind of play Oprah Winfrey and try and work  
10:26 2 them out for you.

10:26 3 This is a little more substantive. So  
10:26 4 I'm going to resist the temptation to shoot from the  
10:27 5 hip.

10:27 6 But I -- what I will do is, my clerks and  
10:27 7 I will take a look at what has been filed on this issue  
10:27 8 in the motion for summary judgment. I think I have a  
10:27 9 very clear understanding of both sides' positions and  
10:27 10 why they want what they want.

10:27 11 And within a day or so -- you'll know by  
10:27 12 tomorrow at the latest what additional briefing, if  
10:27 13 any, I think is necessary.

10:27 14 But let us take a look at the summary  
10:27 15 judgment papers on this specific issue and decide  
10:27 16 whether or not, first, it's necessary. If it's  
10:27 17 necessary -- if we decide it's necessary, we'll have  
10:27 18 more briefing. We'll do a separate Markman.

10:27 19 If we find it's unnecessary but we need  
10:27 20 more briefing, we'll let you know there.

10:27 21 And if we find that we think we can rule  
10:27 22 on this issue just by the motion for summary judgment  
10:27 23 that's been filed by Cisco and the response that's  
10:28 24 going to be filed by the plaintiff, then we'll let you  
10:28 25 know that as well.



10:28 1 But I appreciate you all doing such a  
10:28 2 great job explaining it to me so I have a clear  
10:28 3 understanding of what the issues are.

10:28 4 Is there anything else anyone needs to  
10:28 5 raise before we go?

10:28 6 MR. CAUGHEY: Not for Paltalk, Your  
10:28 7 Honor.

10:28 8 MS. PIEPMEIER: And not from Cisco, Your  
10:28 9 Honor.

10:28 10 Thank you again for the opportunity to  
10:28 11 present this to you.

10:28 12 MR. CAUGHEY: Thank you for your time.

10:28 13 THE COURT: I apologize. After four  
10:28 14 years of going back and forth between Austin and Waco,  
10:28 15 I knew inevitably I-35 would -- I'd have one bad day on  
10:28 16 I-35 and it was today. And so I ordinarily would have  
10:28 17 been on the Zoom video and in my office. But greater  
10:28 18 forces than me prevented that.

10:28 19 And actually it was nice to have the call  
10:28 20 this way to help me get to Waco easier.

10:28 21 So if I don't see any of you before  
10:28 22 Christmas or the holidays, I hope you have a wonderful  
10:29 23 Christmas and holidays. And we'll get this resolved in  
10:29 24 the very near future. Thanks, everyone.

10:29 25 (Hearing adjourned.)

1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
3  
4

5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
7 District of Texas, do certify that the foregoing is a  
8 correct transcript from the record of proceedings in  
9 the above-entitled matter.

10 I certify that the transcript fees and  
11 format comply with those prescribed by the Court and  
12 Judicial Conference of the United States.

13 Certified to by me this 6th day of  
14 December 2022.

15  
16 /s/ Kristie M. Davis  
KRISTIE M. DAVIS  
Official Court Reporter  
800 Franklin Avenue  
Waco, Texas 76701  
18 (254) 340-6114  
kmdaviscsr@yahoo.com  
19  
20  
21  
22  
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